Mollie Ong Siew Choo @ Mrs Chong Kim Choy & Ors v NCT United Development Sdn Bhd

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24NCvC-1586–06 OF 2022
ROZ MAWAR JC
11 MAY 2023

Land Law — Sale and purchase of property — Beneficial ownership — Whether buyers having paid full purchase price became beneficial owners of their properties — Whether party who stepped into developer's shoes held the properties as bare trustee for the said buyers — Whether registration of properties in that party's name was defeasible for being obtained by means of a void or insufficient instrument and had to be set aside — Whether properties had to be transferred forthwith into buyers' names — Whether party who stepped into developer's shoes could not under s 71 of the Contracts Act 1950 ('the CA') claim costs of 'rehabilitating' buyers' properties as buyers had opposed such works from the beginning — Whether the 'rehabilitation' works were carried out unlawfully and therefore failed to fulfill conditions for s 71 of the CA to operate

The four plaintiffs herein, who were members of a family, had each signed sale and purchase agreements ('SPAs') with a housing developer ('KSU') to buy properties that were being built on a project. When the SPAs were executed, individual titles for the properties had not yet been issued. The plaintiffs paid the full purchase prices for their properties before KSU went into liquidation. Thereafter, the plaintiffs followed up constantly with, among others, the liquidators of KSU to find out when the certificate of fitness for occupation and the separate document of titles for their properties would be issued. The plaintiffs later discovered that the defendant had taken over the completion of the housing project from KSU and that individual titles issued in respect of the properties had been registered in the defendant's name. The defendant informed the plaintiffs that they had to pay 'rehabilitation costs' on their properties (the first plaintiff to pay RM500,000 and the other three plaintiffs RM320,000 each) before the properties could be transferred to them. The plaintiffs refused to pay the said costs and demanded that the defendant transfer the properties to them as undertaken by KSU before it was wound up. The plaintiffs filed the instant action when the defendant refused to heed their demand. The defendant counterclaimed for costs it had supposedly incurred to 'rehabilitate' the plaintiffs' properties.

Held, declaring the plaintiffs as the beneficial owners of the properties they had purchased, ordering the registrar of titles/land administrator to cancel the registration of the defendant as the owner of the properties and to register the

properties in the names of the respective plaintiffs, ordering the defendant to immediately deliver up vacant possession of the respective properties to the plaintiffs and ordering damages payable by the defendant to the plaintiffs to be assessed:

(1) Having paid the full purchase price for the properties and having redeemed the same from the financier of the project, the plaintiffs became the beneficial owners of the properties which the defendant merely held as a bare trustee for them. Per s 340(2)(b) of the National Land Code, the registration of the defendant as the owner of the properties was obtained by means of an insufficient or void instrument. That registration was therefore defeasible and had to be set aside (see paras 25–27).

(2) The defendant had committed trespass and the tort of conversion by using the first plaintiff's completed unit as a sales gallery without her consent. The first plaintiff had every right to take vacant possession of her property as its beneficial owner (see paras 33, 35 & 37).

(3) The defendant's counterclaim for the costs of 'rehabilitating' the plaintiffs' properties was premised on s 71 of the Contracts Act 1950. As the plaintiffs, who were the rightful owners of the properties, had never consented to the carrying out of any rehabilitation works on their properties — and, in fact, had opposed it — it could not be said that the works were done legally. The defendant's reliance on the High Court's order to carry out the rehabilitation works was erroneous as Phase 1 — where the plaintiffs' properties were situated — did not come under the court order. Although the defendant never intended to carry out the rehabilitation works gratuitously, the plaintiffs could not be held liable for the costs of the works which were carried out unlawfully. There was also no evidence that such works amounted to the sum claimed by the defendant. The defendant's counterclaim was therefore dismissed (see paras 38, 40 & 44–46).

[Bahasa Malaysia summary

Empat plaintif ('plaintif') yang merupakan ahli-ahli keluarga, masing-masing telah menandatangani perjanjian jual beli ('PJB') dengan pemaju perumahan ('KSU') untuk pembelian hartanah yang sedang dibina di dalam sebuah projek. Apabila PJB tersebut ditandatangani, hak milik individu untuk hartanah masih belum dikeluarkan. Plaintif juga membayar harga pembelian penuh bagi hartanah mereka sebelum KSU dibubarkan. Selepas itu, plaintif sentiasa menghubungi, antara lain, pelikuidasi KSU untuk mengetahui bila sijil kelayakan menduduki dan dokumen hak milik yang berasingan untuk hartanah mereka akan dikeluarkan. Plaintif kemudian mendapati defendan telah mengambil alih projek perumahan itu daripada KSU dan hak milik individu yang dikeluarkan berkenaan dengan hartanah berkenaan telah

didaftarkan atas nama defendan. Defendan memaklumkan plaintif perlu membayar 'kos pemulihan' ke atas harta mereka (plaintif pertama membayar RM500,000 dan tiga plaintif lain RM320,000 setiap seorang) sebelum harta itu boleh dipindahkan kepada mereka. Plaintif enggan membayar kos tersebut dan menuntut defendan memindahkan hartanah itu kepada mereka seperti yang sepatutnya dibuat oleh KSU sebelum syarikatnya digulungkan. Plaintif memfailkan tindakan ini apabila defendan enggan memenuhi tuntutan mereka. Defendan membuat tuntutan balas atas kos yang dikatakan untuk 'memulihkan' harta plaintif.

Diputuskan, mengisytiharkan plaintif sebagai pemilik berkepentingan terhadap hartanah yang dibeli, memerintahkan pendaftar hak milik/pentadbir tanah untuk membatalkan pendaftaran defendan sebagai pemilik hartanah dan mendaftarkan plaintif sebagai pemilik hartanah tersebut, memerintahkan defendan menyerahkan milikan kosong kesemua hartanah tersebut kepada plaintif dengan segera dan memerintahkan kerugian yang boleh dibayar oleh defendan kepada plaintif untuk dinilai:

(1) Setelah membayar harga pembelian penuh untuk hartanah tersebut dan membayar pembiaya projek, plaintif merupakan pemilik berkepentingan hartanah yang mana defendan hanyalah pemegang Amanah untuk mereka. Menurut s 340(2)(b) Kanun Tanah Negara, pendaftaran defendan sebagai pemilik hartanah itu adalah melalui dokumen yang tidak mencukupi atau tidak sah. Oleh itu, pendaftaran itu boleh dipertikaikan dan sepatutnya diketepikan (lihat perenggan 25–27).

(2) Defendan telah melakukan pencerobohan dan tort penukaran dengan menggunakan unit yang telah siap milik plaintif pertama sebagai galeri jualan tanpa persetujuannya. Plaintif pertama mempunyai segala hak untuk mengambil milikan kosong hartanya sebagai pemilik berkepentingan (lihat perenggan 33, 35 & 37).

(3) Tuntutan balas defendan bagi kos 'pemulihan' hartanah plaintif adalah berdasarkan kepada s 71 Akta Kontrak 1950. Sebagai plaintif yang merupakan pemilik sah hartanah itu, mereka tidak pernah bersetuju untuk menjalankan sebarang kerja pemulihan ke atas hartanah mereka — malah, tidak bersetuju dengan penggunaannya — dan oleh itu ianya tidak boleh dikatakan bahawa kerja-kerja itu dilakukan secara sah. Kebergantungan defendan terhadap perintah Mahkamah Tinggi untuk menjalankan kerja-kerja pemulihan adalah salah kerana Fasa 1 — di mana hartanah plaintif berada — tidak tertakluk di dalam perintah mahkamah. Walaupun defendan tidak pernah berniat untuk menjalankan kerja-kerja pemulihan secara tidak wajar, plaintif tidak boleh dipertanggungjawabkan ke atas kos kerja-kerja yang dijalankan secara tidak sah. Tiada bukti bahawa kerja-kerja tersebut boleh dituntut

oleh defendan. Oleh itu, tuntutan balas defendan adalah ditolak (lihat perenggan 38, 40 & 44–46).]

Cases referred to

He-Con Sdn Bhd v Bulyah bt Ishak & Anor (as administrators for the estate of Nor Zainir bin Rahmat, the deceased) and another appeal [2020] 4 MLJ 662, FC (refd)

Kraas Solutions Sdn Bhd v Konsesi Kota Permatamas Sdn Bhd [2018] 6 MLJ 202, CA (distd)

MBF Property Services Sdn Bhd ('No 2') v Madihill Development Sdn Bhd [1997] MLJU 309, HC (refd)

OSK Trustees Bhd (as trustees for Sunway Real Estate Investment Trust) & Anor v Metroplex Holdings Sdn Bhd [2020] 3 MLJ 358, CA (refd)

Samuel Naik Siang Ting v Public Bank Bhd [2015] 6 MLJ 1, FC (refd)

Usima Sdn Bhd v Lee Hor Fong (trading under the name and style of Pembinaan LH Fong) [2017] 5 MLJ 273, FC (refd)

Wan Noor Kamariah bt Wan Jaafar v Aritah Realty Sdn Bhd & Ors and other appeals [2021] 6 MLJ 446; [2021] 8 CLJ 693, CA (folld)

Yeong Ah Chee v Lee Chong Hai & Anor and other appeals [1994] 2 MLJ 614, SC (folld)

Legislation referred to

Companies Act 1965 (repealed by Companies Act 2016) s 176
Contracts Act 1950 s 71
National Land Code ss 240(2)(b), 340(2)(b), 417

Wong Hok Mun (with Justin Lee Soong Jun) (Azim, Tunku Farik & Wong) for the plaintiffs.

Jordan Teng Wei Peng (with Gary Ng Cheng and Sherlyn Choy Pei Zhen) (Dennis Nik & Wong) for the defendant.

Roz Mawar JC:

[1] The family — the mother ('the first plaintiff'), the two sons ('the second and third plaintiffs') and the daughter ('the fourth plaintiff') had entered into sale and purchase agreements with Kumpulan Sepang Utama Sdn Bhd ('KSU') for the following properties:

Purchaser	SPA Date	Property	Purchase Price
The first plaintiff	30 July 2001	Lot 73 (Phase 1) (Geran 340110; Lot 126594)	RM687,600

Purchaser	SPA Date	Property	Purchase Price
The second plaintiff	30 May 1997	Lot 105 (Phase 1) (Geran 340183; Lot 126664)	RM410,000
The third plaintiff	30 May 1997	Lot 104 (Phase 1) (Lot 340184; Lot 126665)	RM410,000
The fourth plaintiff	30 May 1997	Lot 76 (Phase 1) (Lot 340128; Lot 126613)	RM410,000

[2] KSU had since been wound up by a court order dated 23 July 2003. KSU was the developer of Taman Kenaga, Bandar Baru Salak Tinggi where the properties were located. The beneficial owner of the land, Lengkap Legenda Sdn Bhd ('LLSB') had charged it to Malaysia Building Society Bhd ('MBSB'). The separate documents of the title were yet to be issued at the time of the execution of the SPAs.

[3] The initial payments made by the plaintiffs were towards the redemption of the properties from MBSB. There was full redemption of the properties bought by the plaintiffs which were excluded from foreclosures. The first plaintiff received the confirmation from MBSB on 3 July 2001 whilst the second to fourth plaintiffs had received it earlier on 17 November 1997. MBSB expressly stated that it should not have any claims, title rights and interests whatsoever in the said properties.

[4] The remainder of the purchase price for the respective properties had also been fully paid by the plaintiffs accordingly. Following that, KSU issued notice for the delivery of vacant possession to the second to fourth plaintiffs on 7 August 2000 and to the first plaintiff on 20 August 2001.

[5] The only matters outstanding that concerned the properties then were the issuance of the certificate of fitness for occupation and the issuance of the separate document of title to the properties.

[6] Although KSU was wound up in 2003, the plaintiffs had learned about this and that Messrs Razalee & Co were appointed as its liquidator in 2005. On 12 December 2005, through their solicitors, the plaintiffs had inquired about the status of the issuance of the certificate of fitness for occupation and the separate documents of title to the properties. They were informed on around 8 March 2006 that there was no development.

[7] The plaintiffs wrote again on 15 March 2006 to ensure that their interests in the properties were noted in their records and that the liquidators and MBSB would not deal with the properties in any manner that was prejudicial. They also wrote to MBSB on the same.

[8] In 2012, the plaintiffs were made to understand that one Gabriel Teo Chun of GTC Corporate Advisory Sdn Bhd was appointed as the new liquidator. So, on 31 January 2012, the plaintiffs wrote to him and KSU to inquire about the status of the issuance of the certificate of fitness for occupation and the separate documents of title to the properties.

[9] The plaintiff received an email on 20 February 2012 from GTC that enclosed a circular dated 26 January 2012 to all purchasers of Phase 1 that referred to a meeting held on 28 December 2011. It confirmed that the two outstanding issues would be dealt with by the liquidators and not included in the formal schemes of arrangements under s 176 of the Companies Act 1965 initiate to facilitate the revival of the other phases of the project by a white knight. Some contribution amount would be required from the purchasers of Phase 1. They however were not required to attend to any matter related to the formal schemes of arrangements.

[10] Meanwhile, the plaintiffs wrote to MBSB again on 23 March 2012 requesting for the title deeds and discharge of charge in respect of the properties.

[11] On 22 April 2013 another email was sent to GTC to obtain further updates on the development of the two issues pertaining to the properties. The response was to reply to a new email thread which was done but no answer was given.

[12] A reminder was sent on 8 November 2013 which was directed to one Wan Mohd Shukri of WMS Associates who was then appointed as the new liquidator of KSU. The letter to WMS Associates was sent on 12 November 2013. There was no response. A follow-up letter was sent to WMS Associates on 11 April 2013.

[13] WMS Associates finally replied on 16 April 2014 informing the plaintiffs that KSU was a bare trustee and that the plaintiffs were not creditors nor contributory and thus was outside the litigation process.

[14] The plaintiffs responded on 18 April 2014 that as a bare trustee, I should not deal with the properties prejudicial to the plaintiffs rights anc interests.

[15] In April 2021, land searches were conducted and the plaintiffs discovered that the individual titles to the properties had been issued anc that the defendant was presently the registered owner of the properties.

[16] The plaintiffs were then made to understand that the defendant hac taken over the development of the project as well as the master title of the land where the properties were situated. The plaintiffs inquired or 16 August 2021 from the defendant on the status of the subdivision fo separate titles for the properties as well as the issuance of the certificate of fitness for the occupation of the properties.

[17] On 2 September 2021 the defendant answered that it was entitled to the unsold and unredeemed units of the project and that the plaintiffs were required to execute a property rehabilitative agreement with the defendant. The defendant was thereafter to transfer the properties to the plaintiffs, the costs of the property rehabilitative agreement as follows:

Purchaser	Property	Rehabilitation Costs
The first plaintiff	Lot 73 (Phase 1) (Geran 340110; Lot 126594)	RM500,000
The second plaintiff	Lot 105 (Phase 1) (Geran 340183; Lot 126664)	RM320,000
The third plaintiff	Lot 104 (Phase 1) (Lot 340184; Lot 126665)	RM320,000
The fourth plaintiff	Lot 76 (Phase 1) (Lot 340128; Lot 126613)	RM320,000

[18] The result of a file search at the High Court by the plaintiffs showed that the High Court order dated 6 March 2012 showed that it was not binding or applicable on their properties as they were fully redeemed and paid for. So the plaintiffs wrote to the defendant on 30 September 2021 stating that their properties were in Phase 1 and not Phases 2A, 3A, 4A, 4B, 5A, 5B and 5C which had not been sold nor redeemed. The plaintiffs demanded the delivery of the original title deeds and that the defendant executed transfers of the properties to the respective plaintiffs.

[19] The refusal and failure on the part of the defendant led to this action of which the plaintiffs claimed that the defendant for the above and also alleged trespass of Lot 72 where the defendant had occupied without the consent of the first plaintiff.

[20] On the part of the defendant, unbeknownst to the plaintiffs, it became the registered owner of the lands on 11 September 2012 which resulted from an agreement entered by KSU together with LLSB and MBSB.

[21] On 12 September 2015 a verification exercise was conducted until 12 October 2015 and a verification report was prepared dated 12 November 2015. The certificate of fitness for occupation (later known as certificate of completion and compliance ('CCC')) for Phase 1 was not issued despite the issuance of notice of vacant possession based on several reasons that included the physical dilapidated condition due to vandalism. The internal infrastructures were found to be damaged, the back lanes were found to have overgrown trees and shrubs, and there was still non-completion of roads and supporting infrastructure to name a few other reasons.

[22] The defendant contended that as Phase 1 was not part of the schemes of arrangement in the High Court order, a separate rehabilitation exercise had to be done before the CCC could be obtained. The rehabilitation was completed on 2 January 2018 and 21 March 2018. The defendant had also contended that registration of the lands was necessary as part of the subdivision and rehabilitation.

THIS COURT'S FINDINGS

[23] Upon studying the affidavits and exhibits, this court found:

(a) the plaintiffs had fully redeemed their respective properties. MBSB had confirmed such to the second to fourth plaintiffs on 17 November 1997 and to the first plaintiff on 3 July 2001. MBSB had corrected and rectified on 17 August 2022 the fact that the first plaintiff had made full redemption;

(b) upon full redemption, no party but the plaintiffs had a claim, title, rights and interest in the respective properties;

(c) the plaintiffs had also fully settled the balance of the purchase price;

(d) upon the settlement of the full purchase price, KSU had notified the second to fourth plaintiffs of the delivery of vacant possession on 7 August 2000. The first plaintiff received her notice of vacant possession from KSU on 20 August 2001;

(e) at that juncture, there were two matters outstanding — the certificate of fitness for occupation and the issuance of the separate document of title to the properties and thereafter for those titles to be registered under the names of the plaintiffs respectively;

(f) the plaintiffs had been diligent in following up on the development and status of the two matters outstanding. They inquired and sent reminders to KSU, its liquidators — Messrs Rzalee & Co, GTC Corporate Advisory Services Sdn Bhd, WMS Associates and lastly upon discovery in 2021 the defendant;

(g) there was no response from them although the defendant became the registered owner of the properties when the individual titles to the properties were issued back on 11 September 2012; and

(h) although the defendant had contended that the properties could yet be certified fit for occupation, the first plaintiff's property was currently occupied. The evidence showed that the banners, buntings and signages were hung up and displayed on the first plaintiff's property. There were electrical meters installed and the property was used as a sales gallery.

[24] The decision by the Supreme Court in *Yeong Ah Chee v Lee Chong Hai & Anor and other appeals* [1994] 2 MLJ 614 is of guidance here at p 624:

> It is an old and well-settled rule of equity that under a valid contract for the sale of land, the beneficial ownership of the land passes to the purchaser who becomes the equitable owner, the vendor having a right to the purchase money for which he has a lien on the land. Please see *Lysaght v Edwards* and this case was cited with approval very often in our courts, eg by the Federal Court in *Inter-Continental Mining Co Sdn Bhd v Societe des Etains Bayas Tudjuh* and *Temenggung Securities Ltd & Anor v Registrar of Titles, Johore & Ors*. When the full purchase price is paid, the vendor becomes a bare trustee, ie unqualified trustee for the purchaser. It is also of salutary effect to remind ourselves of the fact that rules of equity apply to this country by the Civil Law Act 1956 and of the observation of Lord Russel of Killowen in *Oh Hiam & Ors v Tham Kong* that 'the Torrens system is designed to provide simplicity and certitude in transfer of land which is amply achieved without depriving equity of the ability to exercise its jurisdiction in personam on grounds of conscience'.

[25] The facts of this case confirmed that the plaintiffs are indeed the beneficial owners of the properties. The law dictated that the defendant was only a bare trustee. The Federal Court in *He-Con Sdn Bhd v Bulyah bt Ishak & Anor (as administrators for the estate of Nor Zainir bin Rahmat, the deceased) and another appeal* [2020] 4 MLJ 662 at p 692:

> That *Samuel Naik*'s case also decided that once the vendor had received full payment of the purchase price from the purchaser, the vendor becomes a bare trustee. And in that legal capacity, the vendor was not permitted in law to sell or transfer the land to new purchasers. Any subsequent conveyance of the same property to new purchasers would thus be void as the vendor, by then being a bare trustee, did not have the requisite capacity to enter into such agreement. It goes without saying that creating a charge over such property would be aimed by the same incapacity. In para 77, the apex court in *Samuel Naik* held that the failure on the part of the original purchaser to lodge a caveat timeously did not in any way negate or defeat its equitable right, title or interest in the property under scrutiny.

[26] This resulted in the defendant, as liquidator for KSU that had developed and was the vendor that sold the properties to the plaintiffs respectively — who had also received the full purchase price from the plaintiffs, only as bare trustees.

[27] This court found that the defendant's titles to the properties were defeasible under s 340(2)(b) of the National Land Code ('the NLC') that provided for the exemptions of titles registered:

> The title or interest of any such person or body shall not be indefeasible where registration was obtained by forgery, or by means of an insufficient or void instrument.

[28] The Federal Court in *Samuel Naik Siang Ting v Public Bank Bhd* [2015] 6 MLJ 1 at p 26 defined 'insufficient or void instrument':

> Under s 340(2)(b), the title or interest of any person for the time being registered as proprietor of any alienated land shall not be indefeasible where the registration was obtained by means of an insufficient or void instrument.
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> In 'Tenure Land Dealings in Malay States' by David SY Wong, at p 364 the author explained the phrase 'insufficient or void instrument' for the purpose of s 240(2)(b) of the NLC as follows:
>
> > (iv) Insufficient or void instrument
> >
> > Section 240(2)(b) also provides that a registered title is defeasible where registration was obtained 'by means of an insufficient or void instrument'. Unlike 'forgery', the expression 'insufficient or void instrument' is so wide as to defy comprehensive enumeration of the circumstances in which a purportedly executed instrument of dealing may be regarded by the court as 'insufficient' or 'void'. Some general observations may indicate how wide its domain may be. The reference to the insufficiency and voidness of an instrument could pertain to all sorts of circumstances and matters relating to the execution of the instrument. Where the instrument is executed in pursuance of a contract of dealing, the invalidity of contract (ie where the contract is void) would plainly entail that the instrument is void accordingly. The instrument may also be 'insufficient' or 'void' for reasons relating to the capacity of the parties concerned, or by reason of some formal defect or irregularity. In addition, non-compliance with relevant statutory requirements may also result in the instrument being regarded as 'insufficient' or 'void'.

[29] The contention of the defendant that the manifestation of it being the registered owner of the properties was derived from the High Court order is plainly erroneous and misconceived. The said High Court order did not encompass Phase 1. The plaintiffs were not named as the purchasers in the scheme in Appendix 1 of the said High Court order. Furthermore, it was applicable to units unsold and unredeemed of which the respective properties of the plaintiffs were not. The properties were completed and notices of vacant possession were also issued to the plaintiffs.

[30] This court is satisfied that the registration of title under the defendant's name as owner of the properties was obtained by means of an insufficient or

A void instrument. The registration of title under the defendant's name was, therefore, defeasible and must be set aside.

[31] The Court of Appeal's decision in *Wan Noor Kamariah bt Wan Jaafar v Aritah Realty Sdn Bhd & Ors and other appeals* [2021] 6 MLJ 446; [2021] 8 B CLJ 693 binds this court. At p 457 (MLJ); p 701 (CLJ) it held that a purchaser having executed the sale and purchase agreement, and paid full purchase price was the beneficial owner of the property and was entitled to the benefits of being the owner although he has yet to become the registered owner. The C vendor on the other hand was only a mere trustee and had no beneficial interest over the said property.

[32] Accordingly, this court found that the registered title cannot pass to the defendant. In particularly so when the said High Court order did not allow, or D rather, had exempted the properties of the plaintiffs, and the plaintiffs themselves as purchasers who had redeemed and paid the purchase price in full.

[33] The defendant had additionally trespassed onto the first plaintiff's property. There was no consent obtained yet the property was being used as E what seemed to be a sales gallery. Despite the notice of vacant possession served on the first plaintiff in August 2001, the certification to occupy the property had yet to be obtained. Until the date of the filing, there was none forwarded to the first plaintiff. Yet, the property was occupied.

F **[34]** This court referred to the case of *MBF Property Services Sdn Bhd ('No 2') v Madihill Development Sdn Bhd* [1997] MLJU 309 which held that trespass unto property was an unjustifiable intrusion, at p 5 of the printed judgment:

> It appears that the slightest crossing of the boundary is sufficient to constitute G trespass. Examples of trespass are abound in the law books and they grow by the day. It is trespass to place anything on or in the land which is in possession of another, and it is also trespass if a person drives a nail into the wall of his neighbour (*Lawrence v Obee* (1815) 1 Stark 22 and *Simpson v Weber* (1925) 41 TLR 302). It is also trespass if one places rubbish against the wall of his neighbour (*Gregory v Piper* H (1829) 9 B&C 591 and *Kynoch Ltd v Rowlands* (1912) 1 Ch 527). Trespass is also said to occur if one grows creeper up his neighbour's wall (*Simpson v Weber*) or even to prop a ladder against the wall of his neighbour (*Westripp v Baldock* (1938) 2 All ER 779 which was subsequently affirmed on appeal vide (1939) 1 ALL ER 279).
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> It is wrong to assume that no one can be liable to trespass unless he has some notice I that he is trespassing. The trespasser is liable whether he knows that he is trespassing or that he does not know that he has no right in law to be there. The notice is relevant in so far as it may aggravate damages and it is an intergral part of the defendant's line of defence. And old classical case lays down the proposition that:
>
> > Every invasion of property, be it ever so minute, is a trespass.

[35] Based on the evidence that the defendant had not procured consent or authorisation from the first plaintiff to occupy her property, the tort of conversion had also been committed by the defendant. The first plaintiff, the beneficial owner of the property had every right to take vacant possession of the property.

[36] The Court of Appeal's decision in *OSK Trustees Bhd (as trustees for Sunway Real Estate Investment Trust) & Anor v Metroplex Holdings Sdn Bhd* [2020] 3 MLJ 358 at p 368 held:

> The essence of the tort of conversion consequently, is in the wrongful appropriation of another's chattels. Unlike the tort of trespass which concerns an interference with another's possessory interest in the chattel, the tort of conversion involves an injury to the other's right or title in the chattel whereby the other is deprived of the use and possession of the chattel. The right of title in the chattel is appropriate and appropriated wrongfully.
>
> Further, it is conversion when there is a lack of mandate or authorisation before the goods of another are taken, detained, sold or dealt with in such manner as to usurp the rights, title, ownership or possession of the other. Conversion must be 'an interference with the property which would not, as against the true owner, be justified, or at least excused, in one who came lawfully into the possession of the goods.' As per Lord Blackburn in *Hollins and others v Fowler and others* (1875) LR 7 HL 757 at pp 757 and 766, followed by Allsop P in *Bunnings Group Ltd v CHEP Australia Ltd* [2011] MSWCA 342. It is not every intromission that amounts to conversion. So, if the appellants' act in relation to the goods would be justified or excusable in a person who knew he was not dealing with his own property, it is not conversion.

[37] The evidence is apparent that the defendant had committed the tort of conversion against the first plaintiff's property. The defendant had not rebutted this fact.

THE DEFENDANT'S COUNTERCLAIM

[38] The defendant counterclaimed the costs of rehabilitation of the plaintiffs' properties premised on s 71 of the Contracts Act 1950 that provides:

> Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

[39] The Federal Court's case of *Usima Sdn Bhd v Lee Hor Fong (trading under the name and style of Pembinaan LH Fong)* [2017] 5 MLJ 273 iterated the four conditions that must be met to invoke s 71 of the Contracts Act 1950, at p 289:

The doing of the act of the delivery of the thing referred to in the section

(1) must be lawful;

(2) must be done for another person;

(3) must not be intended to be done gratuitously;

(4) must be such that the other person enjoys the benefit of the act or the deliver.

[40] All those conditions must be answered at the time the act was done by the defendant. The defendant's counsel submitted that equitable principles prevent unjust enrichment of the Plaintiff at the expense of the Defendant that had rehabilitated the properties.

[41] The defendant had referred to the Court of Appeal's decision in *Kraas Solutions Sdn Bhd v Konsesi Kota Permatamas Sdn Bhd* [2018] 6 MLJ 202 at p 220:

> With respect, we are of the view that s 71 of the CA can be properly invoked by the appellant, and we agree with the above submissions of the appellant. It is true, as stated by the learned judge, that the appellant has a contractual relationship with Novanexus and the appellant should be paid by Novanexus for any delivery of goods to Novanexus. In this case, according to the CSA, the appellant was to deliver the goods to the respondent at the project site, but payment must be made by Novanexus. It follows that the appellant is entitled to compensation, or be restored the goods delivered (see *Dream Property* and *Tanjung Teras*). Therefore, if the respondent wishes to retain the goods or the benefit, the respondent has to pay the appellant for the amount claimed by the appellant. With respect, we cannot agree with the learned judge's reasoning as it would render s 71 meaningless. Section 71 is precisely to facilitate recovery against a party with whom there is no contractual relationship but who has nevertheless received the benefit of the appellant's lawful act which was never intended to be done gratuitously. This was clearly explained in *Dream Property* and *Tanjung Teras*.

[42] The plaintiffs challenged the legality of the act — the rehabilitation contended to have been carried out by the defendant. The plaintiffs claimed that there was no consent given by them to the defendant and thus the defendant's entry and whatever rehabilitative works the defendant was said to have carried out amounted to trespass and the tort of conversion which made the alleged rehabilitation unlawful.

[43] The defendant submitted that its right to the project and land on which the plaintiffs' properties are stemmed from the said High Court order where to rehabilitate the project as a whole of which it had been ordered expressly as to Phases 2A, 3A, 4A, 5A, 5B and 5C, it had to rehabilitate the whole project. The defendant argued that it was necessary that the plaintiffs' properties be

rehabilitated as well and additional infrastructure works needed to be carried out. The defendant had relied on the verification works and report dated 2015.

[44] This court opined that the reliance on the said High Court order was erroneous as Phase 1 where the plaintiffs' properties are situated are not encompassed under it. Upon notification of this proposed plan by the defendant, the plaintiffs had expressed their objections on 30 September 2021.

[45] This court is inclined to agree with the plaintiffs as the facts are distinguished from the case of *Kraas Solutions*. As there were no consent from the plaintiffs who were the beneficial and rightful owners of the properties, it cannot be said that the rehabilitation was done legally.

[46] Although this court noted that it was never the intention of the defendant to have carried out the rehabilitation gratuitously, the plaintiffs cannot be held liable for costs on the works carried out unlawfully. This court observed that there is no evidence that such works had been carried to account for the amount claimed by the defendant. The defendant's counterclaim is hereby dismissed.

THIS COURT'S ORDER

[47] Pursuant to this court's findings, it is declared that:

(a) the first plaintiff is the sole beneficial owner of Lot 126594 held under the Title No Geran 340110, Mukim Dengkil, Daerah Sepang, Selangor;

(b) the second plaintiff is the sole beneficial owner of Lot 126664 held under the Title No Geran 340183, Mukim Dengkil, Daerah Sepang, Selangor;

(c) the third plaintiff is the sole beneficial owner of Lot 126665 held under the Title No Geran 340184, Mukim Dengkil, Daerah Sepang, Selangor;

(d) the fourth plaintiff is the sole beneficial owner of Lot 126613 held under the Title No Geran 340128, Mukim Dengkil, Daerah Sepang, Selangor;

(e) the register documents of titles for Lot 126594, Lot 126664, Lot 126665 and Lot 126613 in the name of the defendant are defeasible pursuant s 240(2)(b) of the NLC and is null and void; and

(f) the defendant is a bare trustee holding on trust:

(i) Lot 126594 on behalf of the first plaintiff;

(ii) Lot 126664 on behalf of the second plaintiff;

(iii) Lot 126665 on behalf of the third plaintiff; and

(iv) Lot 126613 on behalf of the fourth plaintiff.

[48] This court orders that the registrar of titles/land administrator cancel the register of the document of Lot 126594, Lot 126664, Lot 126665 and Lot 126613 in favour of the defendant. They are to be registered and register documents must be issued as follows:

(a) Lot 126594 in the name of the first plaintiff;

(b) Lot 126664 in the name of the second plaintiff;

(c) Lot 126665 in the name of the third plaintiff; and

(d) Lot 126613 in the name of the fourth plaintiff.

[49] The registrar of titles/land administrator and all relevant authorities and officers are directed under s 417 of the NLC to give immediate effect to the orders granted herein by this court.

[50] The defendant shall immediately deliver vacant possession of the properties to the respective plaintiffs. All relevant keys are to be delivered immediately by the defendant to the plaintiffs together with the vacant possession of the respective properties.

[51] The first plaintiff's property which has been occupied by the defendant whose vacant possession must be delivered to the first plaintiff must be restored to its original state and good condition.

[52] This court orders for damages to be awarded to the plaintiffs. An assessment of damages is to be done accordingly.

[53] Costs of RM15,000 is awarded to the plaintiffs. Costs of RM8,000 is additionally awarded to the plaintiffs for the dismissal of the defendant's counterclaim.

Order accordingly.

Reported by Ashok Kumar